STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHELLE LAURISSA GAUL-WALTERS, a/k/a, LAURISSA GENESIS GAUL, a/k/a KASSANDRA JANE RYAN,

Defendant-Appellant.

UNPUBLISHED
October 21, 2014

No. 316813
Bay Circuit Court
LC No. 12-010211-FH

Before: SAAD, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

Defendant was convicted following a jury trial of one felony count of violating MCL 750.218(4)(a) for using a false pretense to obtain a thing having a value of $1,000 or more but less than $20,000, one felony count of fraudulently obtaining a controlled substance (Vicodin) in violation of MCL 333.7407(1)(c), and one misdemeanor count of obtaining a prescription drug (Vicodin) by using a false name in violation of MCL 333.17766(a). Defendant was sentenced as a fourth habitual offender under MCL 769.12 to 20 to 120 months' imprisonment for false-pretenses, 20 to 180 months' imprisonment for obtaining a controlled substance by fraud, and 41 days' imprisonment for obtaining a prescription drug by false name. She appeals by right. We affirm.

On February 4, 2011, defendant arrived at Bay Regional Medical Center and sought emergency medical treatment. She gave the hospital a false name. She complained of flu-like symptoms, and her treating physician evaluated her and determined that Vicodin, a controlled substance, was appropriate to alleviate her pain. Defendant received a pack of Vicodin to take home before she left the emergency room. The evidence at trial established that the cost of the hospital services provided to defendant was $1,897.20, and that there was no public or private insurance carrier the hospital could validly bill for those services. Consequently, defendant's bill was not paid.

Defendant first argues that there was insufficient evidence to support her conviction for false pretenses under MCL 750.218. This Court reviews sufficiency of the evidence issues de novo. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010). When reviewing the sufficiency of the evidence in a criminal case, the Court examines the evidence in the light

most favorable to the prosecution to determine whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Harris*, 495 Mich 1, 126; 845 NW2d 477 (2014). The Court considers the evidence with respect to each essential element of the crime. *People v Dunigan*, 299 Mich App 579, 582; 831 NW2d 243 (2013).

At issue in this case are certain elements of the crime of false pretenses. "The elements of the crime of false pretenses are: (1) a false representation as to an existing fact, (2) knowledge by defendant of the falsity of the representation, (3) use of the false representation with an intent to deceive, and (4) detrimental reliance on the false representation by the victim." *People v Wogaman*, 133 Mich App 823, 826; 350 NW2d 816 (1984); see also MCL 750.218. Under MCL 750.218(4)(a), the prosecution must prove that the service the defendant obtained by false pretenses had a value of at least $1,000.

The record in this case demonstrates that the prosecution presented evidence to establish each element of the crime of false pretenses. The evidence was undisputed on the first three elements: defendant misrepresented her name to the hospital, she did so knowingly, and she had intent to deceive. Specifically, defendant explained to a police officer that she had given the hospital a false name because she did not want a certain doctor to know she was at the hospital.

Defendant argues that there was insufficient evidence on the fourth element, detrimental reliance. We disagree. The prosecution presented evidence that defendant's use of a false name precluded the hospital from seeking Medicaid reimbursement for the cost of the February 4, 2011 treatment. Elizabeth Reason, the hospital's Director of Patient Access, testified that the hospital could not submit defendant's bill to Medicaid because the hospital could not be certain of defendant's identity. Reason explained that a hospital's submission of a Medicaid claim without positive identification of the patient could be deemed Medicaid fraud. Reason indicated that as of the February 4 treatment date, the hospital had no definitive proof of defendant's identity.

Defendant further argues that the prosecution failed to establish a causal link between her use of a false name and the hospital's loss. This argument disregards the evidence of the hospital's billing structure. According to defendant, the hospital would have sustained a loss regardless of defendant's false pretense, because the hospital had an obligation to treat anyone in need of emergency medical treatment, including uninsured patients. However, even if the hospital had an obligation to provide emergency treatment to defendant, the evidence at trial established that the hospital had limited options to obtain payment for defendant's treatment. The evidence indicated that an individual could apply for financial assistance and could arrange to make payments to the hospital; the evidence further indicated that the hospital could seek payment for the individual's services from a third-party payor such as Medicaid. From this evidence, the jury could rationally determine that absent an accurate identification, the hospital had no options for billing the services it provided to defendant. The jury could also rationally determine that the hospital relied on defendant's representation about her identity for billing purposes. Accordingly, the jury could rationally conclude that the hospital's detrimental reliance on defendant's false pretenses resulted in a loss of services valued in excess of $1,000.

Next, defendant argues that there was insufficient evidence to support her conviction under MCL 333.7407(1)(c) and MCL 333.17766(a). MCL 333.7407(1)(c) is violated where a

person knowingly or intentionally obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge. Similarly, MCL 333.17766(a) is violated where a person obtains or attempts to obtain a prescription drug by giving a false name to a pharmacist or other authorized seller, prescriber, or dispenser. It is undisputed that Vicodin is both a controlled substance and a prescription drug. However, defendant argues that there was insufficient evidence to conclude that she possessed Vicodin, or that she obtained Vicodin "by" use of a false name.

Although there was no direct testimony that anyone personally witnessed defendant in possession of Vicodin, there was ample circumstantial evidence for the jury to draw that conclusion. See *People v Carines*, 460 Mich 70, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993) ("'Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.'"). Specifically, defendant's treating physician testified that he ordered Vicodin to be dispensed to defendant, that a nurse dispensed the pills, and that defendant received a packet of Vicodin before she left the emergency room.

As for the impact of giving the hospital a false name, defendant's treating physician testified that defendant not being who she said she was could "possibly" have affected his decision to dispense Vicodin. He also testified that he had previously evaluated defendant and determined that she had an "opiate dependency." The jury could have reasonably inferred that if defendant had given the hospital her real name, then the hospital would have located her medical history, and her treating physician would not have given her Vicodin, given her opiate dependency. Thus, there was sufficient evidence for a reasonable jury to conclude that defendant would not have obtained Vicodin but for her use of a false name.

Accordingly, defendant has failed to show that there was insufficient evidence to support her convictions under MCL 333.7407(1)(c) and MCL 333.17766(a) for lack of possession and causation.

Lastly, defendant argues that the trial court committed error warranting reversal in failing to read standard Criminal Jury Instruction 2d 23.12 to the jury. "[J]ury instructions that involve questions of law are . . . reviewed de novo." *People v Schaefer*, 473 Mich 418, 427; 703 NW2d 774 (2005). "However, [this Court] review[s] a trial court's determination whether a jury instruction is applicable to the facts of a case for an abuse of discretion." *People v Guajardo*, 300 Mich App 26, 34; 832 NW2d 409 (2013). The trial court abuses its discretion when its outcome falls outside the principled range of outcomes. *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008).

As this Court stated in *People v Kurr*, 253 Mich App 317, 326-327; 654 NW2d 651 (2002):

> A criminal defendant has a state and federal constitutional right to present a defense. Const 1963, art 1, § 13; US Const, Ams VI, XIV; *People v Hayes*, 421 Mich 271, 278; 364 NW2d 635 (1984). Instructional errors that directly affect a defendant's theory of defense can infringe a defendant's due process right to present a defense.

Jury "instructions must include all elements of the crime charged and must not exclude consideration of material issues, defenses, and theories for which there is supporting evidence." *Kurr*, 253 Mich App at 327. "To give a particular instruction to a jury, it is necessary that there be evidence to support the giving of that instruction." *People v Johnson*, 171 Mich App 801, 804; 430 NW2d 828 (1988). "Even if instructions are imperfect, reversal is not required if they fairly present the issues to be tried and sufficiently protect the defendant's rights." *People v Chapo*, 283 Mich App 360, 373; 770 NW2d 68 (2009). Moreover, "[j]ury instructions are to be read as a whole," and "[n]o error results from the absence of an instruction as long as the instructions as a whole cover the substance of the missing instruction." *Kurr*, 253 Mich App at 327. "To warrant reversal of a conviction, the defendant must show that it is more probable than not that the failure to give the requested instruction undermined the reliability of the verdict." *People v McMullan*, 284 Mich App 149, 162; 771 NW2d 810 (2009).

CJI2d 23.12 states as follows, with respect to the crime of false pretenses:

> If *[name complainant]* made and relied more on [his / her] own investigation or an independent source than on what the defendant said, then *[name complainant]* cannot claim that the defendant misled [him / her] and you must find the defendant not guilty.

Defendant argues that the above instruction was critical to her defense because her treating physician testified that he gave her Vicodin because he believed the drug was medically appropriate following his medical evaluation. The physician's examination would constitute an "investigation," and he did testify that the decision to dispense Vicodin came in response to his medical evaluation of defendant. However, defendant was not charged with obtaining Vicodin by false pretenses. Rather, defendant was charged with causing the hospital to incur $1,897.20 worth of medical bills by false pretenses. In other words, the operative fact for purposes of the crime was the hospital's decision to treat defendant in the first place, not the physician's decision to give her Vicodin. The physician's investigation was irrelevant to the hospital's decision whether to treat defendant.

Accordingly, the court did not abuse its discretion in declining to give CJI2d 32.12.

Affirmed.

/s/ Henry William Saad
/s/ Peter D. O'Connell
/s/ Christopher M. Murray